

DEBARMENTS AND SUSPENSIONS

Within the past 2 years, two major healthcare product manufacturers, Baxter Healthcare Corporation (Baxter) and C. R. Bard, Inc. (Bard) have faced debarment and suspension actions. These sanctions adversely affected the Navy's ability to equip its military treatment facilities (MTF's) with required pharmaceuticals and other medical items. What exactly are suspensions and debarments? How are they imposed? For your reference, a summary of the policies and procedures governing the debarment and suspension of contractors by Federal contracting agencies is discussed below. A more detailed description may also be found in Part 9, Debarment, Suspension, and Ineligibility of the Federal Acquisition Regulation (FAR).

What is a debarment? Debarment is described as the exclusion of contractors from Government contracting and Government-approved subcontracting for "a reasonable" specified period. Who has authority to debar contractors? This is assigned to the agency head or designee authorized by the agency head. Debarment encompasses all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. However, a debarment may be extended by the debarring official to include any affiliates of the contractor if they are, (1) specifically named, and (2) given written notice of the proposed debarment with an opportunity to respond to this notice. A contractor's debarment, or proposed debarment, is effective throughout the Executive Branch of the Government, unless an acquiring agency's head or designee states in writing the compelling reasons justifying continued business dealings between that agency and the contractor. Hence, as explained below, the suspensions and proposed debarments of both Baxter and Bard, which were processed by the VA, were binding, at least initially, on the Navy as well.

Contractors may be debarred for a conviction of or civil judgment for-- (1) Commission of fraud, (2) Violation of antitrust statutes, (3) Other criminal statutes/offenses. A contractor may also be debarred if it seriously violates any contract terms or violates the Drug-Free Workplace Act. How long are debarments effective? Debarments continue for a period commensurate with the seriousness of the cause mentioned above. Generally, debarments do not exceed 3 years, although violations of the provisions of the Drug-Free Workplace Act may result in debarments of up to 5 years.

What is a suspension? Suspension is defined as an immediate temporary exclusion of a contractor "pending completion of investigation or legal proceeding when it has been determined necessary to protect the Government's interest." Contractors may be disqualified temporarily from Government contracting and Government-approved subcontracting by a suspending official. Who has authority to suspend contractors? Again, the contracting agency's head or the agency's designee is authorized to impose suspension. Normally suspensions are terminated if legal proceedings have not taken place within 12 months after the

date of the suspension notice. Suspensions may be extended by the Assistant Attorney General for no more than an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period. Similar to debarments, suspensions are effective throughout the Executive Branch of the Government, unless an acquiring agency's head or designee states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

Last year, the Department of Veterans Affairs (VA) suspended Baxter based on the findings from an investigation conducted by the VA's Inspector General. This put the Navy's medical activities at risk in providing quality patient care. However, based on compelling circumstances, the Assistant Secretary of the Navy granted specific temporary authority to continue contracting actions with Baxter until the end of October 1993 or upon termination of the suspension which ever occurred first. In December Baxter's suspension was terminated and Federal agencies resumed business with Baxter.

Contractors may be suspended, upon adequate evidence, of--(1) Indications of fraud, (2) Indications of antitrust violations, and (3) Indications of lack of business integrity. Indictment is considered adequate evidence for suspension purposes. Suspension encompasses all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities.

Due to the seriousness of debarment and suspension actions against contractors, contracting officers may only impose these sanctions in the public interest for the Government's protection and not for purposes of punishment.

Following the opening of bids or receipt for proposals, the contracting officer reviews the "Consolidated List of Debarred, Suspended, and Ineligible Contractors," which identifies parties excluded from procurement programs. This list is compiled, maintained, and distributed throughout the executive agencies by the General Services Administration. Agencies may solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Proposals, quotations, or offers received from any contractor listed shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the acquiring agency's head or designee determines, in writing, that there is a compelling reason to do so. A contractor is considered ineligible when it is excluded from Government contracting pursuant to statutory, Executive order, or regulatory authority. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers. Immediately prior to award, the contracting officer shall again review the list to ensure that no award is made to a listed contractor.

Contracts that are in existence before a suspension or debarment is imposed remain in effect. However, these contracts may not be renewed

or extended unless a "compelling reason" exists. Also, no Government contractor may award a subcontract equal to or in excess of \$25,000 to a debarred/suspended contractor unless there is a compelling reason to do so and the contractor first notifies the contracting officer and further complies with the provisions of the FAR.

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